

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Title License (No. 48777), Abstractor's Company License (No. 274); Real Estate Closing License (No. 40073555); and Notary Commission (No. 6140847) of Linda Tuttle-Olson; and the Abstract Company License (No. 4) of Freeborn County Abstract Company d/b/a Albert Lea Abstract Co.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Raymond R. Krause ("ALJ") on June 16, 2011, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Order for Prehearing Conference, dated May 2, 2011.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Linda Tuttle-Olson, did not appear in person or by counsel. The record closed upon the Respondent's default on June 16, 2011.

The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges were sent to the Respondent at the address found on the service list and were not returned as undelivered. In addition, the Administrative Law Judge sent a letter with information for the Respondent. That letter was not returned as undelivered.

STATEMENT OF ISSUE

1. Did Respondent engage in conduct, including misappropriation of funds, check kiting, comingling trust fund accounts in violation of Minn. Stat. §§ 60K.43, subd. 1(4) and (8); 82.82, subd. 1(b) and (f); and 82.81, subd. 12(12)?

2. Did the Respondent fail to observe high standards of commercial honor, breach her fiduciary responsibility, engage in fraudulent, deceptive or dishonest practices and be shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 60K.43, subd. 1(8); 82.82, subd. 1(b) and (f) as well as Minn. R. 2795.1000 and 2795.1300?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 2, 2011, the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, and the Notice of Appearance were sent by first class mail to Linda Tuttle-Olson. They were not returned to the Department.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed disciplinary action may be upheld.

4. Because Respondent failed to appear, she is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 58.12; 45.024; 45.027; 82.82, and 14.50 (2004).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of her failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent engaged in conduct, including misappropriation of funds, check kiting, comingling trust fund accounts in violation of Minn. Stat. §§ 60K.43, subd. 1(4) and (8); 82.82, subd. 1(b) and (f); and 82.81, subd. 12(12).

7. Respondent failed to observe high standards of commercial honor, breached her fiduciary responsibility, engaged in fraudulent, deceptive or dishonest practices and was shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. §§ 60K.43, subd.1(8); 82.82, subd. 1(b) and (f) as well as Minn. R. 2795.1000 and 2795. 1300.

8. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce impose appropriate discipline upon the Respondent.

Dated: June 28, 2011

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Default (no recording)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.